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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/577,724	05/02/2006	Jakob Socher	0600-1059	3160
466 7590 01/08/2010 YOUNG & THOMPSON 209 Madison Street Suite 500 Alexandria, VA 22314				
EXAMINER WOOD, ELLEN S				
ART UNIT 1794		PAPER NUMBER		
NOTIFICATION DATE 01/08/2010		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DocketingDept@young-thompson.com

Office Action Summary

Application No.

10/577,724

Applicant(s)

SOCHER, JAKOB

Examiner

ELLEN S. WOOD

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09/08/2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-16 and 24 is/are pending in the application.
- 4a) Of the above claim(s) 17-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-16 and 24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 13-16 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Virog et al. (US 4,046,275, hereinafter "Virog").

In regards to claim 13, Virog discloses a three-quart thin-walled blow-molded plastic mild bottle of special design (col. 1, lines 3-4). The side walls are stiffened by a wide internally projecting substantially horizontal band which extends around the corners (col. 2 lines 45-49). The band, for decorative purposes, may continue all around the periphery, being very shallow (e.g. 1/32 inch deep) along the front and lower rear walls (col. 2 lines 60-65). Thus, the band is configured to completely surround said periphery of said food packaging. The band is molded as part of the bottle (col. 2 lines 9-27). The bottles are molded from high density polyethylene or polyolefins and made by stretched (col. 2 lines 9-21). Thus, the band is formed from a film material. The band is preferably of continuously varying depth along the sides or projecting inwardly to its greatest extend midway between the corners and tapering toward the corners (col. 2 lines 48-52, fig. 4). Thus, the band has a lateral annular wall extending between a bottom and an upper face, the band extending longitudinally between two ends and having a first and second longitudinal edge. Each band has a width (measured

vertically) of about $\frac{3}{4}$ inches and has a depth (i.e. the extent to which it projects inwardly, horizontally) of over $\frac{1}{4}$ inch, preferably about $\frac{3}{8}$ inch, at its midpoint and has sloping top and bottom faces so that its cross-section in a vertical plan may be described as trapezoidal (col. 2, lines 52-58). Thus, at least one first portion extending longitudinally, having a maximum width; and at least one second portion having a minimum width, the minimum width being between one third and two thirds the maximum width wherein the rifts edge is rectilinear and substantially parallel to a longitudinal axis of the band. It is a decorative band (col. 2 lines 61-64).

In regards to claim 14-15 and 24, Virog discloses that at the band's midpoint and it has sloping top and bottom faces so that its cross-section in a vertical plan may be described as trapezoidal (col. 2, lines 52-58 and fig. 4). Thus, in order for the cross-section to be viewed as a trapezoid the first portions would form a convex profile and the second portion would form a concave profile, as seen in applicant's fig. 1. This would be considered an undulating line which is comprised of a plurality of alternating curves.

In regards to claim 16, Virog discloses the band is situated at a level below the base of the handle and substantially above the base of the bottle (col. 3 lines 9-13). Thus the maximum width of the band is substantially equal to the maximum height of the lateral wall of the food packaging.

Response to Arguments

3. Applicant's arguments filed 09/08/2009 have been fully considered but they are not persuasive.
4. The rejection of claim 15 under 35 U.S.C 112, second paragraph as being indefinite, has been removed based on applicant's amendment.
5. Claim 24 has been added and does not introduce new matter.
6. The applicant argues that the decorative band as recited is formed of a film material, whereas Virog discloses a decoration made by printing on the bottle.

In response, Virog discloses a band that that is formed during the molding of the bottle. Thus, the molded band is formed from the film material of the bottle. The film material of the bottle is high density polyethylene or polyolefins (col. 2 lines 9-27). The applicant refers to col. 4, lines 43-45 of Virog, wherein it states that a decoration can be made on the bottle. The decoration disclosed in col. 4 lines 43-45 is not the band of Virog. Therefore, the band of Virog is formed from a film material.

7. The applicant argues that the Virog fails to teach a first portion of a minimum width and second portion of a maximum width as claimed. The applicant states that the web forming the annular groove 16 has a transversal extension which varies because of the depth of the groove varies, this disclosure cannot be compared to the width of a decorative band as recited.

In response, Virog discloses that the band is preferably of continuously varying depth along the sides or projecting inwardly to its greatest extend midway between the corners and tapering toward the corners (col. 2 lines 48-52, fig. 4). Thus, the band has a lateral annular wall extending between a bottom and an upper face, the band

extending longitudinally between two ends and having a first and second longitudinal edge. Each band has a width (measured vertically) of about $\frac{3}{4}$ inches and has a depth (i.e. the extent to which it projects inwardly, horizontally) of over $\frac{1}{4}$ inch, preferably about $\frac{3}{8}$ inch, at its midpoint and has sloping top and bottom faces so that its cross-section in a vertical plan may be described as trapezoidal (col. 2, lines 52-58). Thus, at least one first portion extending longitudinally, having a maximum width; and at least one second portion having a minimum width, the minimum width being between one third and two thirds the maximum width wherein the rifts edge is rectilinear and substantially parallel to a longitudinal axis of the band. It is a decorative band (col. 2 lines 61-64).

The applicant does not provide reasoning for why the disclosure cannot be compared to the width of a decorative band. The applicant does not provide reasoning for why Virog does not disclose a first portion of a minimum width and a second portion of a maximum width. It is well-settled that unsupported arguments are not a substitute for objective evidence. *In re Pearson*, 494 F.2d 1399, 1405, 181 USPQ 641, 646 (CCPA 1974).

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ELLEN S. WOOD whose telephone number is (571)270-3450. The examiner can normally be reached on M-F 730-5 with every other Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on (571)272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Rena L. Dye/
Supervisory Patent Examiner, Art Unit 1794

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